

JUL 24 2008

**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

MUR 5964
DATE COMPLAINT FILED January 16, 2008
DATES OF NOTIFICATION March 21, 2008
and May 27, 2008
LAST RESPONSE RECEIVED May 6, 2008
DATE ACTIVATED April 1, 2008
EXPIRATION OF SOL January 10, 2013

COMPLAINANT:

Michael R. Sneed

RESPONDENTS:

Schock for Congress and
Rachel Honegger, in her official capacity
as treasurer
Aaron Schock
Citizens for Schock and
Robert Meiss, in his official capacity
as treasurer
Wilson Grand Communications, Inc

**RELEVANT STATUTES
AND REGULATIONS:**

2 U S C § 434(b)
2 U S C § 441b(a)
2 U S C § 441i(e)(1)(A)
11 C F R § 110 3(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I INTRODUCTION

The Complaint in this matter alleges that Aaron Schock's State campaign
committee, Citizens for Schock, transferred an asset to his federal campaign committee,

1 Schock for Congress, in violation of the Federal Election Campaign Act of 1971, as
2 amended ("the Act")¹

3 The asset in question is video footage of Aaron Schock walking through the
4 Illinois Statehouse with a staff person ("the footage") The footage was filmed by Wilson
5 Grand Communications, Inc ("WGC") and used in television advertisements Citizens for
6 Schock (the "State Committee") paid WGC to create in connection with Aaron Schock's
7 2006 campaign for re-election to the Illinois House of Representatives The Complaint
8 alleges that the footage is now being used in television advertisements paid for by Schock
9 for Congress (the "Federal Committee") in connection with Aaron Schock's 2008
10 campaign for election to the United States House of Representatives²

11 The Federal Committee in its response to the Complaint acknowledges that it used
12 the footage in television advertisements promoting Aaron Schock's Congressional
13 campaign, but it claims that it paid WGC, who it asserts owns the footage, the fair market
14 value for the use of the footage See Federal Committee Response at 2 However, as
15 discussed more fully *infra*, there is a reasonable likelihood that the State Committee, not
16 WGC, owns the footage, and that the Federal Committee has not paid the usual and
17 normal charge for the use of the footage In view of the likelihood that the State
18 Committee owns the footage, which may have been paid for with nonfederal funds, we
19 recommend that the Commission find reason to believe that Aaron Schock and the State
20 Committee and its treasurer violated 2 U S C § 441i(e)(1)(A) and 11 C F R § 110.3(d),
21 and that the Federal Committee and its treasurer violated 2 U S C §§ 441i(e)(1)(A) and

¹ Aaron Schock is presently a member of the Illinois House of Representatives He is also a candidate for the United States House of Representatives from Illinois' 18th Congressional District

² The Federal Committee's television advertisements can be viewed on its website, <http://www.aaronschock.com/schmedia.html>

434(b), and 11 C F R § 110 3(d) In the alternative, because WGC may own the footage, and the Federal Committee did not pay the usual and normal charge for the use of the footage in its television advertisements, we recommend that the Commission find reason to believe that WGC violated 2 U S C § 441b(a) and the Federal Committee and its treasurer violated 2 U S C §§ 441b(a) and 434(b)

II. ANALYSIS

A. Ownership of the Footage

The footage at issue was produced pursuant to a contract between the State Committee and WGC ("Contract") The Contract, which is attached to the Federal Committee's Response, provides, *inter alia*, "[a]ll art work, media materials, tapes, commercials, and other creative products are the exclusive copyrighted property of WGC and by this agreement WGC does license use of such materials to [Citizens for Schock] in perpetuity " Federal Committee Response at 6 This language, however, does not make it clear as to whether WGC or the State Committee owns the footage

Under U S Copyright law, the copyright owner can transfer his or her right to use the copyrighted work by granting a license to another person See 17 U S C § 201(d) The grant of an exclusive license actually transfers copyright ownership, whereas a non-exclusive license does not See *Davis v Bulge*, 505 F 3d 90, 101 (2nd Cir 2007) The Contract does not specify whether WGC granted the State Committee an exclusive or a non-exclusive license An exclusive license would mean that the State Committee could transfer the right to use the footage to the Federal Committee By contrast, if the license WGC granted the State Committee was non-exclusive, then WGC owns the footage The

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1 proposed investigation in this matter would determine whether WGC or the State
2 Committee owns the footage³

3 **B. Usual and Normal Charge for Use of the Footage**

4 The Commission's regulations define "usual and normal charge" as "the price of
5 those goods in the market from which they ordinarily would have been purchased at the
6 time of the contribution " 11 C F R § 100 52(d)(2) The Federal Committee attached an
7 invoice from WGC to its Response, which shows that WGC billed the Federal Committee
8 \$750 for 250 DVDs containing the 2006 and 2008 television advertisements⁴ Federal
9 Committee Response at 9 The Federal Committee claims that it paid WGC \$750 "to
10 produce the DVDs, which included use of the footage and the duplication of the DVDs "
11 *Id* at 2 The Federal Committee asserts that \$750 is the "the usual and normal charge for
12 such activity " *Id*

13 WGC's invoice, however, does not indicate what portion of the \$750 was for
14 duplication and what portion was for use of the footage As noted, WGC's invoice
15 describes what the \$750 covers, namely, "250 DVDs of 2006 and 2008 ads " Although
16 \$750 might be the usual and normal charge for making 250 DVDs (i e , \$3 00 per DVD)
17 containing the 2006 and 2008 television advertisements, WGC's invoice does not appear
18 to support the Federal Committee's assertion that \$750 included both a fee for the
19 duplication of the DVDs and the usual and normal charge for using the footage in the
20 Federal Committee's television advertisements Indeed, on its face, the invoice is simply
21 for making 250 DVDs of the 2006 and 2008 ads The charge for using the footage is not

³ Neither WGC nor the State Committee submitted a response to our notification letters dated May 27, 2008

⁴ Complainant alleges that he received one of these DVDs See Complaint

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1 indicated on the face of the invoice and the absence there from is not explained or
2 acknowledged in the Federal Committee's Response The proposed investigation in this
3 matter would determine the usual and normal charge for the use of the footage

4 **C. If the State Committee Owns the Footage, there is Reason to Believe that**
5 **the State Committee May Have Made a Prohibited Transfer of an Asset**
6 **Purchased with Nonfederal Funds to the Federal Committee**

7
8 Section 110 3(d) of the Commission's regulations provides, in material part, that
9 transfers of assets from a candidate's campaign committee for a nonfederal election to his
10 or her principal campaign committee for a federal election are prohibited 11 C F R
11 § 110 3(d) The Commission, however, has permitted the transfer of a nonfederal
12 committee's assets to the campaign committee of a candidate for federal office when
13 such transfer was conducted under current market practices and at the usual and normal
14 charges See Advisory Opinion 1992-19 (Mike Kreider for Congress Committee) (lease
15 of state campaign committee's computer equipment to candidate's federal campaign
16 committee)

17 In addition, Federal candidates and officeholders, or entities directly or indirectly
18 established, financed, maintained or controlled by them, are restricted from soliciting,
19 receiving, directing, transferring, or spending nonfederal funds See 2 U S C
20 § 441i(e)(1)(A) The State of Illinois does not prohibit corporations from making
21 contributions to candidates and the State Committee's disclosure reports show that it
22 accepted contributions from corporations during 2006, the year in which the State
23 Committee paid WGC to produce the television advertisements containing the footage

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1 Consequently, it is possible that a portion of the funds the State Committee used
2 to purchase the footage came from sources prohibited by the Act *See* 10 ILCS 5/9-16,
3 26 Ill Adm Code § 100 10, 2 U S C § 441b(a) Thus, if the Federal candidate Aaron
4 Schock and his State Committee transferred the footage to the Federal Committee, and
5 the Federal Committee did not pay the usual and normal charge for the footage, such
6 conduct would constitute a violation of 2 U S C § 441i(e)(1)(A) and 11 C F R
7 § 110 3(d) ⁵ *See, e g* , MUR 5480 (Levetan for Congress) (finding reason to believe that
8 the candidate and her state and federal campaign committees violated 2 U S C
9 § 441i(e)(1)(A) and 11 C F R § 110 3(d) by transferring polling data paid for by the state
10 committee to the federal committee), MUR 5426 (Schultz for Congress) (finding reason
11 to believe that the candidate and his state and federal campaign committees violated
12 2 U S C § 441i(e)(1)(A) and 11 C F R § 110 3(d) where the state committee made
13 expenditures that benefited the candidate's federal election campaign) The available
14 information does not suggest that the Federal Committee paid the State Committee the
15 usual and normal charge for use of the footage

16 This transfer from the State Committee would also constitute a contribution to the
17 Federal Committee, which it would be required to disclose *See* 2 U S C § 434(b)
18 Because the Federal Committee did not report the receipt of the State Committee's
19 contribution, it appears that the Federal Committee may have violated 2 U S C § 434(b)
20 as well ⁶

⁵ Aaron Schock has not submitted a response to our notification letter dated May 27, 2008

⁶ The Federal Committee has disclosed disbursements to the State Committee for other purposes office equipment and supplies, photography reimbursement, and database rental *See* Federal Committee's 2007 October Quarterly Report, 2008 Pre-Primary Election Report, and 2008 April Quarterly Report

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1 Therefore, we recommend that the Commission find reason to believe that Aaron
2 Schock and Citizens for Schock and Robert Meiss, in his official capacity as treasurer,
3 violated 2 U S C § 441i(e)(1)(A) and 11 C F R § 110 3(d) by transferring an asset to the
4 Federal Committee We further recommend that the Commission find reason to believe
5 that Schock for Congress and Rachel Honegger, in her official capacity as treasurer,
6 violated 2 U S C §§ 441i(e)(1)(A) and 434(b), and 11 C F R § 110 3(d) by receiving an
7 asset transferred from the State Committee and by failing to report the receipt of a
8 contribution from the State Committee

9 **D. If WGC Owns the Footage, there is Reason to Believe that WGC**
10 **Made a Prohibited Corporate Contribution to the Federal**
11 **Committee**

12
13 Under the Act, corporations are prohibited from making contributions or
14 expenditures from their general treasury funds in connection with the election of any
15 candidate for federal office It is also prohibited to knowingly receive such a
16 contribution 2 U S C § 441b(a) WGC is incorporated in the Commonwealth of
17 Virginia and, therefore, is prohibited from making contributions to candidates for federal
18 office The term "contribution" includes "anything of value " 2 U S C § 431(8)(A)(i)
19 The term "anything of value" includes the provision of any goods or services at a charge
20 that is less than the usual and normal charge for such goods or services See 11 C F R
21 § 100 52(d)(1)

22 If the license WGC granted the State Committee was a non-exclusive license,
23 then WGC owned the footage Because the available information suggests that WGC
24 may have charged the Federal Committee something less than the usual and normal
25 charge for the use of the footage in the Federal Committee's television advertisements,

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1 WGC may have made a contribution to the Federal Committee in violation of 2 U S C
2 § 441b(a) By knowingly accepting this contribution, the Federal Committee may have
3 violated 2 U S C § 441b(a) as well Therefore, we recommend that the Commission find
4 reason to believe that Wilson Grand Communications, Inc violated 2 U S C § 441b(a)
5 by making a prohibited corporate contribution to Schock for Congress and that Schock
6 for Congress and Rachel Honegger, in her official capacity as treasurer, violated 2 U S C
7 § 441b(a) by knowingly receiving a corporate contribution

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15 **IV. RECOMMENDATIONS**

16 1 Find reason to believe that Schock for Congress and Rachel Honegger, in
17 her official capacity as treasurer, violated 2 U S C §§ 434(b), 441b(a) and
18 441i(e)(1)(A), and 11 C F R § 110 3(d),
19

20 2 Find reason to believe that Aaron Schock violated 2 U S C
21 § 441i(e)(1)(A) and 11 C F R § 110 3(d),
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23 3 Find reason to believe that Citizens for Schock and Robert Meuss, in his
24 official capacity as treasurer, violated 2 U S C § 441i(e)(1)(A) and
25 11 C F R § 110 3(d),
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27 4 Find reason to believe that Wilson Grand Communications, Inc violated
28 2 U S C § 441b(a),
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- Thomasema P Duncan**
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